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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed  
as a separate compilation.

## RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 9th August, 1971:—

### Bill No. XXIII of 1971

*A Bill further to amend the Industrial Disputes Act, 1947.*

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

- |             |   |                               |
|-------------|---|-------------------------------|
|             | 1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 1971.  | Short title and commencement. |
|             | (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.  |                               |
| 14 of 1947. | 2. In section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act),—   | Amendment of section 2.       |
| 34 of 1948. | (a) in sub-clause (i) of clause (a), for the words and figures 'the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948, or the "Indian Airlines" and "Air-India" Corporations established under section 3 |                               |
| 27 of 1953. | of the Air Corporations Act, 1953, or', the words and figures 'the Industrial Finance Corporation of India established under section 3 of   |                               |
| 15 of 1948. | the Industrial Finance Corporation Act, 1948, or the Employees' State Insurance Corporation established under section 3 of the Em-  |                               |
| 34 of 1948. | ployees' State Insurance Act, 1948, or the "Indian Airlines" and "Air-India" Corporations established under section 3 of the Air Corpora-   |                               |
| 27 of 1953. | tions Act, 1953, or the Life Insurance Corporation of India estab-  |                               |
| 31 of 1956. | lished under section 3 of the Life Insurance Corporation Act, 1956, or shall be substituted;  |                               |

(b) after clause (g), the following clause shall be inserted, namely:—

‘(gg) “executive”, in relation to a trade union, means the body, by whatever name called, to which the management of the affairs of the trade union is entrusted;’;

(c) after clause (ll), the following clause shall be inserted, namely:—

‘(lll) “office bearer”, in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;’;

(d) in clause (n), after sub-clause (i), the following sub-clause shall be inserted, namely:—

“(ia) any service in, or in connection with the working of, any major port or dock;”.

Insertion  
of new  
section  
11A.

3. After section 11 of the principal Act, the following section shall be inserted, namely:—

Powers  
of Labour  
Courts,  
Tribunals  
and  
National  
Tribunals  
to give  
appropriate  
relief in  
case of  
discharge  
or dismissal  
of  
workmen.

“11A. Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”.

Amendment  
of  
section  
25FFF.

4. In section 25FFF of the principal Act,—

(a) in sub-section (1), for the existing *Explanation*, the following *Explanation* shall be substituted, namely:—

“*Explanation*.—An undertaking which is closed down by reason merely of—

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on,

shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section”;

(b) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Notwithstanding anything contained in sub-section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub-section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if—

(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;

(b) the service of the workman has not been interrupted by such alternative employment; and

(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.

(1B) For the purposes of sub-sections (1) and (1A), the expressions “minerals” and “mining operations” shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.”.

67 of 1957.

5. In the *Explanation* to sub-section (3) of section 33 of the principal Act, for the words “an officer”, the words “a member of the executive or other office bearer” shall be substituted. Amend-  
ment of  
section 33.

6. In sub-section (1) of section 36 of the principal Act, for the words “an officer”, wherever they occur, the words “any member of the executive or other office bearer” shall be substituted. Amend-  
ment of  
section 36.

7. In the First Schedule to the principal Act, item 18 shall be omitted. Amend-  
ment of  
First Schedule.

## STATEMENT OF OBJECTS AND REASONS

In *Indian Iron and Steel Company Limited and another v. their workmen* (AIR 1958, S. C. 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in cases of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

2. The International Labour Organisation, in its recommendation (No. 119) concerning "Termination of employment at the initiative of the employer" adopted in June, 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new section 11A is proposed to be inserted in the Industrial Disputes Act, 1947.

4. Section 25FFF of the Industrial Disputes Act, 1947, provides for payment of compensation to workmen in case of closing down of an undertaking and the amount is calculated at the rate of fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. But, in the case of closure on account of unavoidable circumstances beyond the control of the employer, the ceiling limit of compensation is the average pay for three months. A central workers' organisation suggested an amendment of section 25FFF of the Act to remove the ceiling limit of compensation in case of closure of a mining undertaking by reason of exhaustion of its reserves. According to its suggestion such closing down should not be deemed to be on account to unavoidable circumstances beyond the control of the employers because the employers have definite knowledge of the exhaustion of the are-reserves of mines. The Industrial Committee on Coal Mining, in its ninth session (Calcutta—10th-11th August, 1964) and the Industrial Committee on Mines other than Coal in its fourth session (New Delhi—20th-21st February, 1965) have agreed to the suggestion to amend the Act for the aforesaid purpose. Accordingly, it is proposed to amend section

25FFF to provide for payment of full compensation to workmen in the event of closing down of a mining undertaking due to exhaustion of its reserves subject to the condition that no retrenchment compensation would be payable to the workmen concerned when an employer provides them with alternative employment with effect from the date of closure at the same remuneration as they were entitled to receive, and on the same terms and conditions of service as were applicable to them, immediately before the closure.

5. It is also proposed to make the Central Government as the appropriate Government in relation to the industrial disputes concerning the Industrial Finance Corporation and the Life Insurance Corporation of India. It is also proposed to declare service in, or in connection with, the working of major ports and docks as permanent public utility service.

6. The Bill is designed to give effect to the above proposals.

NEW DELHI;  
*The 22nd July, 1971.*

R. K. KHADILKAR.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to widen the powers of Labour Courts, Industrial Tribunals and National Tribunals, in adjudication proceedings under section 10 of the Industrial Disputes Act, 1947, to review orders of dismissal and discharge of workmen, and also to determine, as may be just and necessary, any less severe punishment than the order of dismissal or discharge in question, in any particular case. The extra time required for the purpose of review of the case by the adjudicating bodies like Labour Courts, etc., is not likely to be appreciable as even at present, the parties may be presenting facts and merits of the cases before such adjudicating bodies. It is proposed to manage, as far as possible, the probable increase in work-load with the existing complement of adjudication machinery. Hence, the provision is not likely to involve any appreciable additional expenditure immediately or in the near future. In any case, the extra expenditure, which will be of recurring nature, is not expected to exceed Rs. 15,000 per annum.

2. Clause 4 of the Bill provides for payment of full compensation to workmen in the event of closing down of a mining undertaking due to exhaustion of its reserves. This provision may also entail some additional financial liability, in the form of enhanced compensation, in respect of mines directly run by the Central Government, like the Kolar Gold Mines Undertakings. Since the financial liability will devolve only in the event of closure on account of exhaustion of mines, there are practical difficulties in estimating the expenditure from the Consolidated Fund of India. The non-recurring expenditure is not likely to exceed Rupees fifty lakhs. There will be no recurring expenditure.

B. N. BANERJEE,  
*Secretary.*